IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 5 OF 2006

M/S. AMIT SHIP MANAGEMENT PVT.LTD., MUMBAI. ... Appellant

Versus

M/S. AQUARIUS PVT.LTD.,VASCO DA GAMA,GOA. ... Respondent

Mr. S.G. Dessai, Sr. Advocate with Mr. Debashish Mazumdar, for the Appellant.

Mr. M.S. Sonak For R-1

Coram:- S.A.BOBDE &
N. A. BRITTO, JJ.

Date:- 20th March, 2007

ORAL ORDER:

This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 against the refusal of the learned Civil Judge, Senior Division at Vasco-da-Gama to set aside the Award under Section 34 of the Arbitration and Conciliation Act, 1996. The learned Civil Judge Senior Division has erroneously described the proceeding before him as an appeal instead of a petition.

2. The ground of challenge before the learned Civil Judge Senior Division arose as follows :-

On 21.06.01 the Arbitrator closed the matter after hearing both sides. Apparently, full opportunity was given before the matter was closed and there is no grievance in that regard.

After the matter was closed sometime in the first week of July, 2001, the appellant attempted to produce certain documents. However, the Arbitrator proceeded to deliver the Award on 16.10.01 without taking those documents into account.

3. The appellant therefore challenged the Award under Section 34 of the Arbitration and Conciliation Act, 1991 invoking Section 34(2)(a)(iii) and (b)(ii) which read as follows :-

" 34. Application for setting aside arbitral award. -
(2) An arbitral award may be set aside by the Court only if -
(a) the party making the application furnishes proof that -
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

(b) the Court finds that -
(ii) the arbitral award is in conflict with the public policy of India. "

4. The learned Civil Judge S.D. has rejected the appellant's petition on the ground that there was no failure of natural justice nor was the appellant unable to present its case.

5. At this juncture, it may be noted that the relevance of the documents, according to the appellant, is that the documents show that the duty to obtain a voyage Insurance was on the respondent, owner of the vehicle and not on the appellant who is a Bare Boat Charterer. The date of the agreement is 1.10.98.

6. Mr. Dessai, learned Counsel for the appellant submitted that the learned Civil Judge S.D. should have seen that there was a failure of natural justice on the ground that the documents produced by the appellant have not been considered by the Arbitrator. We fail to see the failure as alleged by the learned Counsel for the appellant. Admittedly, the appellant did nothing when the matter was being heard by the Arbitrator. Much after the Arbitrator closed the matter on 21.06.01 the appellant produced certain documents on record. These documents have not been considered and taken into account by the Arbitrator while delivering his Award. We do not see any failure of natural justice. In any case, the ground provided by Section 34 for setting aside the Arbitral Award is that the Award is liable to be interfered with where the party making the application is otherwise unable to present his case. We see no such inability imposed on the appellant which prevented him from presenting his case. The appellant was fully able to present his case, but for reasons best known to him did nothing by way of filing the documents, till much after the matter was closed by the Arbitrator. This is not the inability contemplated by law.

7. Mr. Dessai, learned Counsel for the appellant further contended that not dealing with the documents after the matter was closed for orders, renders the Arbitral Award as being in conflict of the public policy of India. We are unable to see any conflict of the public policy of India where a party before the Arbitrator chooses to withdraw certain documents while the matter is being heard and attempts to file such documents after that. In such a case if the Arbitrator does not deal with such documents, the Award cannot be said to be in conflict of public policy of India.

8. In any case Mr. Sonak, learned Counsel for the respondent points out that there is no failure of justice since the documents which the appellant sought to produce pertained to a contract of the year 1998 which is not the

subject matter of the arbitration at all. This submission seems to be borne out by the application under which the appellant sought to produce the documents. This aspect has also been dealt with by the learned Civil Judge in paragraph 20 where the learned Judge has observed that the Arbitrator has decided the matter on the basis of the second agreement and that the first agreement will not come in the picture at all. It makes no substantial difference to the matter that the appellant had also produced two documents pertaining to the second agreement.

9. We see no merit in the appeal which is hereby dismissed.

S.A.BOBDE, J.

N. A. BRITTO, J.

sl.